

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON**

**OHIO VALLEY ENVIRONMETNAL
COALITION, INC., and WEST
VIRGINIA HIGHLANDS
CONSERVANCY, INC.,**

Plaintiffs,

v.

CIVIL ACTION NO. 3:07-cv-00413

APOGEE COAL COMPANY, LLC,

Defendant.

DEFENDANT'S WITNESS AND EXHIBIT LIST

Pursuant to the Court's July 14, 2010 Order, Defendant submits the following lists of witnesses and exhibits in advance of the hearing set to commence on August 9, 2010.

WITNESSES

1. Peter Chapman, Ph.D., R.P. Bio.
Principal – Senior Environmental Scientist
Golder Associates Ltd.
500-4260 Still Creek Drive, Burnaby, BC,
Canada V5C 6C6
Dr. Chapman will be presented as an expert on matter within his scientific technical qualifications.
2. Jim Lozier
CH2M Hill
2625 S. Plaza Drive
Tempe, AZ 85282-3397
Mr. Lozier will be presented as an expert on mattes within his specific and technical qualifications.
3. Tim Harrison, P.E.
Senior Project Manager
CH2M HILL
10123 Alliance Road, Suite 300
Cincinnati, Ohio 45242

Mr. Harrison will be presented as an expert on mattes within his specific and technical qualifications.

4. Tom Sandy, P.E.
Senior Technologist
CH2M HILL
Carmel Commons Blvd., Suite 304
Charlotte, NC 25266
Mr. Sandy will be presented as an expert on mattes within his specific and technical qualifications.
5. Paul Ziemkiewics, Ph.D.
West Virginia Water Research Institute
Morgantown, West Virginia
Dr. Ziemkiewicz will be presented as an expert on mattes within his specific and technical qualifications.
6. Mindy Armstead, Ph.D.
Potesta & Associates
Charleston, West Virginia
Dr. Armstead will be presented as an expert on mattes within his specific and technical qualifications.
7. Phil Rooney
Commercial Developer
GE Water & Process Technologies
4636 Somerton Road
Trevose, PA 19053-6783
8. John McHale
Patriot Coal Corporation
500 Lee Street, East Suite 900
Charleston, WV 25301
9. Jim Constant
Patriot Coal Corporation
500 Lee Street, East Suite 900
Charleston, WV 25301
10. Barry Thacker, P.E.
Geo-Environmental Associates, Inc.
3502 Overlook Circle
Knoxville, TN 37909
Mr. Thacker will be presented as an expert on mattes within his specific and technical qualifications.
11. Raymond J. Lovett, Ph.D.
Managing Partner

ShipShaper, LLP

P.O. Box 2

Morgantown, WV 26507-0002

Dr. Lovett will be presented as an expert on matters within his specific and technical qualifications.

12. Mark Schroder
Senior Vice President and Chief Financial Officer
Patriot Coal Corporation
12312 Olive Road Boulevard
St. Louis, MO 63101
13. David Colbert
Vice President
Global Materials Technology, Inc.
1540 East Dundee Road, Suite 210
Palatine, Illinois 60074

EXHIBITS

Because depositions in this case are continuing through August 4, 2010 under compressed discovery schedule, Defendant reserves the right to modify this Exhibit List based on the need to respond or rebut facts developed during the remaining depositions. Moreover, depositions of expert witnesses on the subject of harm to aquatic life as a result of violations of the selenium limits in WV/NPDES Permits WV1022911 and WV1013599 are scheduled to be conducted on July 28 and 29, 2010. Because of that, without limiting their general reservation expressed above, Defendant reserves the right to use as an exhibit at trial any document produced in discovery related to harm to aquatic life, any document used as an exhibit in a deposition of a harm witness, and any document or reference material needed to rebut Plaintiffs' anticipate assertions regarding harm to aquatic life as a result of violations of WV/NPDES Permits WV1022911 and WV1013599.

Defendant identifies the following specific documents as Exhibits for trial in this matter.

1	Ex. 2 06/09/2008 Affidavit of J. McHale	3:07-cv-413 Doc. 73
2	07/24/2008 Affidavit of John McHale with attachments	3:07-cv-413 Doc. 95
3	09/11/2008 AFFIDAVIT of Jim Constant	3:07-cv-413 Doc. 114
4	09/11/2008 Affidavit of John McHale	3:07-cv-413 Doc. 114
5	Ex. 1 - Sealed Document - 09/29/2008 Affidavit of John McHale	3:07-cv-413 Doc. 116
6	Ex. 2 - Jim Lozier article: Evaluating Traditional and Innovative Concentrate Treatment and Disposal Methods for Water Recycling at Big Bear Valley, California	3:07-cv-413 Doc. 123
7	(Attachments: # (1) 12/01/2008 Affidavit of John McHale with Ex.s , 1) 12/01/2008 Affidavit of Tim Harrison , 2) 12/01/2008 Affidavit of Dr. Raymond Lovett , 3) 12/01/2008 Affidavit of Dr. John Sawyer) (Gardner, Blair)	3:07-cv-413 Doc. 127
8	Ex. 2 12/01/2008 Affidavit of Dr. Raymond Lovett]	3:07-cv-413 Doc. 128
9	Ex. 1-1 - 01/05/2009 Affidavit of Raymond Lovett	3:07-cv-413 Doc. 134
10	Ex. 1-3 - 01/05/2009 Affidavit of Fred Liberatore	3:07-cv-413 Doc. 134
11	Ex. 1-4 - Verification of Peter Chapman with letter	3:07-cv-413 Doc. 134
12	Ex. 1-5 - 01/05/2009 Affidavit of Jim Constant with Selenium data	3:07-cv-413 Doc. 134
13	Ex. 1 - 01/05/2009 Affidavit of Raymond Lovett	3:07-cv-413 Doc. 136
14	Ex. 3 - 01/05/2009 Affidavit of Jim Constant with 13 attachments	3:07-cv-413 Doc. 136
15	Ex 4 Task 1 of 6 - Slideshow - Ruffner Mine Selenium Characterization and Treatment Alternatives Evaluation Kickoff Meeting, October 1, 2008, Charleston, WV, CH2M Hill	3:07-cv-413 Doc. 136
16	Ex 4 Task 2 of 6 - Patriot Coal Apogee Site Wastewater Sampling Plan, Prepared for Patriot Coal Charleston, West Virginia, October 2008, Prepared by CH2M Hill	3:07-cv-413 Doc. 136
17	Ex 4 Task 3 of 6 - Basis of Design Memorandum for Selenium Conceptual Treatment Alternatives for the Patriot Coal Apogee Site	3:07-cv-413 Doc. 136
18	Ex 4 Task 4 of 6 - Screening-Level Regulatory Analysis for Selenium in Surface Mine Water Discharge Patriot Coal, Apogee Site	3:07-cv-413 Doc. 136
19	Ex 4 Task 5 of 6 - Preliminary Watershed Flow Estimation with Diversion and Equalization Analysis—Patriot Coal, Apogee Site, Ruffner Mine Outfalls 001, 002, and 003	3:07-cv-413 Doc. 136
20	Ex 4 Task 6 of 6 - Selenium Conceptual Treatment Alternatives Evaluation —Patriot Coal, Apogee Site, Ruffner Mine Outfall 002	3:07-cv-413 Doc. 136
21	Ex. A - ShipShaper Progress Report [Raymond Lovett]	3:07-cv-413 Doc. 143

22	Ex. B - ShipShaper Proposal [Raymond Lovett]	3:07-cv-413 Doc. 143
23	Ex. F - WV Water Research Institute Report - Identifying Sources and Effects of Selenium in the Mud River Basin [Ziemkiewicz]	3:07-cv-413 Doc. 143
24	Ex. G - Potesta Summary	3:07-cv-413 Doc. 143
25	Attachment 6: Affidavit of John McHale	3:07-cv-413 Doc. 144
26	Ex. A: CH2M HILL Review Comments on New Logic Research's September 26, 2009 VSEP® Pilot Study Report New Logic Research VSEP® Pilot Study at Patriot Coal	3:07-cv-413 Doc. 146
27	Ex. B: CH2M HILL Review Comments on New Logic Research's 9/26/09 VSEP® Series i Filtration System Budget Proposal No. 09-0926	3:07-cv-413 Doc. 146
28	Ex. D: CH2M HILL Response to New Logic Comments on CH2M HILL Memorandum dated October 21, 2009	3:07-cv-413 Doc. 146
29	12/15/2009 AFFIDAVIT of Jim Constant, with attachments	3:07-cv-413 Doc. 147
30	Ex. C: Pilot Fluidized Bed System Lease and Services for or CH2M Hill Envirogen Technologies Reference Number – 22391	3:07-cv-413 Doc. 147
31	Ex. E-2: CH2M Hill Proposal – Engineering Services for Selenium Research Projects Patriot Coal, Hobet Mine Site – Charleston, WV	3:07-cv-413 Doc. 147
32	STATUS REPORT by Apogee Coal Company, LLC with attachments	3:07-cv-413 Doc. 153
33	Ex. D - 12/21/2009 Affidavit of Paul Ziemkiewicz	3:09-cv-1167 Doc. 18
34	Ziemkiewicz Attachment 1 to	3:09-cv-1167 Doc. 18
35	Ex. 6 Designing A Mine Water Treatment System To Remove Selenium [Raymond Lovett]	3:09-cv-1167 Doc. 24
36	Final Report: Review of Available Technologies for the Removal of Selenium from Water, prepared for North American Metals Council, June 10, 2010, CH2M Hill, Thomas Sandy	--
37	CV of Peter Chapman, Ph.D.	
38	CV of Jim Lozier	
39	CV of Tim Harrison, P.E.	
40	CV of Tom Sandy, P.E.	
41	CV of Paul Ziemkiewicz, Ph.D.	

- 42 CV of Mindy Armstead, Ph.D.
- 43 CV of Barry Thacker, P.E.
- 44. Transcripts of Depositions conducted in preparation for the August 9, 2010 hearing
- 45 Transcripts of Deposition of Phil Rooney Under FRCP 32
- 46 Transcript of Deposition of Mark Schroeder Under FRCP 32, if necessary
- 47 Demonstrative Map of Apogee Site
- 48 Demonstration Map of Hobet Site
- 49 Timeline illustrating company compliance activities August 9, 2010
- 50 July 23, 2009 Duff & Phelps Valuation of Magnum Coal Co. (Bates No. A3CON000002)
- 51 January 23, 2009 CH2M HILL Technical Memorandum "Selenium Conceptual Treatment Alternative Evaluation – Patriot Coal, Apogee Site, Ruffner Mine Outfalls 002" (Doc. #136-22)
- 52 AACE International, "Cost Estimate Classification System – As Applied in Engineering, Procurement, and Construction for the Process Industries" (Doc. #146-4 at 23)
- 53 Harrison et al., "Characterization and Treatment of Selenium in Water Discharged From Surface Coal Mining Operations in West Virginia" (2010) (Bates No. OVEC04223)
- 54 February 11, 2009 Draft Selenium Site Assessment and Treatment Evaluation of the Mud River Basin by Potesta (Bates No. A3a-007550 to 007573)
- 55 Sandy et al., "Review of Available Technologies for the Removal of Selenium from Water" (June 2010) (Bates No. A3-012188)
- 56 August 21, 2008 Letter from CH2M Hill to John McHale (previously entered into record in this matter as a sealed document by Defendant)
- 57 August 12, 2008 Technical Memorandum from CH2M HILL to John McHale, "Apogee Mine – Selenium Reduction Conceptual Approach and Scope of Work, Rev. 1 (previously entered into record in this matter as a sealed document by Defendant)

- 58 Patriot Coal Apogee Site Wastewater Sampling Plan (Doc. #136-19)
- 59 November 21, 2008 Technical Memorandum from CH2M HILL to John McHale, "Screening Level Regulatory Analysis for Selenium in Surface Mine Water Discharge" (Doc. #136-23)
- 60 October 9, 2008 CH2M HILL Kickoff Meeting Power Point Presentation
- 61 November 24, 2008 CH2M HILL Memorandum to John McHale, "CH2M HILL Memorandum to Support Patriot Coal Response to US District Court Order; Civil Action No. 3:07-cv-0413 (Doc. No. 121-2)
- 62 December 2008 Affidavit of Timothy Harrison (Doc. #127-2)
- 63 January 19, 2009 Technical Memorandum, "Basis of Design Memorandum for Selenium Conceptual Treatment Alternative for the Patriot Coal Apogee Site" (Doc. #136-20)
- 64 February 16, 2009 Technical Memorandum from CH2M HILL to John McHale, "Evaluation of VSEP as a Conceptual Alternative for Selenium Treatment – Patriot Coal, Apogee Site, Ruffner Mine Outfall 002"
- 65 September 2, 2009 Technical Memorandum from CH2M HILL to John McHale, "Cost Estimates for Two Full-Scale ABMet Systems Options for Selenium Treatment – Patriot Coal, Hobet Site, Outfall 002 (Doc. # 144-3)
- 66 June 4, 2009 "New Logic VSEP Pilot Testing: Status Teleconference Call Summary" (Doc. # 143-6)
- 67 October 2009 FBR Lease with Envirogen (Doc. #147-3)
- 68 October 9, 2009 Letter from CH2M HILL to John McHale re Additional Selenium Research Projects (Doc. # 147-6)
- 67 October 21, 2009 CH2M HILL Review Comments on New Logic Research's 9/26/09 VSEP Series 1 Filtration System Budge Proposal No. 09-0926" (Doc. #146-2)
- 68 October 21, 2009 CH2M HILL Review Comments on New Logic Research's September 26, 2009 VSEP Pilot Study Report New Logic Research VSEP Pilot Study at Patriot Coal (Doc. #146-1)
- 69 November 6, 2009 CH2M HILL Reject Management Evaluation for New Logic Research's VSEP System Reject Stream on New Logic Research's September 26, 2009 VSEP Pilot Study Report New Logic Research VSEP Pilot Study at Patriot Coal (Doc. #148-1)
- 70 November 20, 2009 CH2M HILL Response to New Logic Comments on CH2M HILL Memorandum dated October 21, 2009 (Doc. #146-4)
- 71 CH2M HILL Reject Management Evaluation for New Logic Research's VSEP System Reject Stream" (Doc. #148-2)

- 72 November 2, 2009 "New Logic's Response to Sizing for Monitoring Storm Flows at Hobet Mine Site – Outfalls 001-041 (Doc. #146-3)
- 73 February 15, 2010 "Conceptual Approach and Sizing for Monitoring Storm Flows at Hobet Mine Site – Outfall 001-041 (Doc. #153-2)
- 74 January 2010 Email Exchange Between John McHale and Tim Harrison (Bates No. A3-003761 to A3-003762)
- 75 March 3, 2010 Power Point Presentation form SME Annual Meeting (Bates No. A3-009796 to AsA-009816)
- 76 January 2010 Email "FW: Mud River Report 30 Nov 09" and Attachment (Bates No. A3a-0014952 to A3a-004998)
- 77 Paul Ziemkiewicz et al. " In Situ Field Scale Treatment fo Selenium-Bearing Spoil Units" (Exhibit to Ziemkiewicz Deposition)
- 78 December 2009 Affidavit of Kenny Daniel (3:09-cv-1167. Doc. #18-1)
- 79 Discharge Monitoring reports for WVNPDES Permits WV1013599, WV1022911, WV0099390, WV1017225, and WV1020889
- 80 December 2009 Affidavit of Paul Ziemkiewicz (3:09-cv-1167. Doc. #18-4)
- 81 Exhibit to 2009 Affidavit of Paul Ziemkiewicz (3:09-cv-1167. Doc. #18-5)
- 82 Data from Titanic ZVI (Bates No. A3-000073-to A3-000195)
- 83 Data from 6-GMT Tanks on Slab Fork outfall (Bates No. A3-000918 to A3-001020)
- 84 Transcript of Dr. Lovett's Testimony in Federal Court in July 2008 (Exhibit to Lovett Deposition)
- 85 December 1, 2008 Lovett Affidavit (Doc. #128)
- 86 Data on Hobet AVI (Doc. #147-9)
- 87 GMT, "Selenium Removal Using a Pumped High Density Elemental Iron System: Final Report" (February 25, 2010) (Doc. #153-1)

- 88 Lovett, R. "A Selenium Treatment System for Apogee Coal Co. LLC" June 2008 (Doc. #95-2)
- 89 Lovett, R. "Designing A Mine Water Treatment System to Remove Selenium" March 4, 2008 (doc. #71-2)
- 90 "Demonstration of a High Density Fiber Zero Valent Iron Technology for Selenium Removal From Mine Drainage" May 2009 (Doc. #143-3)
- 91 Lovett, R., "Description and Performance Evaluation of the Selenium Removal System at Apogee Titanic Site" (Doc. 121-2)
- 92 Patriot Coal Corp. 2009 10K, Filed on 2/24/2010 (Exhibit to Schroeder Deposition)
- 93 2009 Annual Report (Exhibit to Schroeder Deposition)
- 94 Patriot Coal Corp. Prospectus Filed Pursuant to Rule 424(b)(2) (Exhibit to Schroeder Deposition)
- 95 Patriot Coal Corp. 10-Q for the First Quarter 2010 (Exhibit to Schroeder Deposition)
- 96 Review of Available Technologies fro the Removal of Selenium Prepared for the North American Metal Council, CH2M HILL June 2010
- 97 Ecological Assessment of Selenium in the "Aquatic Environment, Peter Chapman, et al, CRC Press, 2010 by the Society of Environmental Toxicity and Chemistry
- 98 Patriot Coal Corporation, 10-Q for 2010, second calendar quarter
- 99 Transcript of hearing before Court, July 2-3, 2008
- 100 Affidavit Paul Ziemkiewicz, (3:09-cv-1107 Doc. 18-4, 18-5 with attachment)
- 101 Order Granting Motion to Supplement, 3:09-cv-1107, Doc. 42-1 through Doc. 42-9
- 102 Documents identified on Exhibits 3-9 attached to Deposition of Michael Mickley Ph. D.
- 103 Notice of Final Lodging of Phase II Pilot
Doc. 148, 1-4
3:07-cv-0413

- 104 Notice of Final Lodging of Phase I Pilot
Doc. 146, 1-4
3:07-cv-0413
- 105 Fifth Status Report
Doc. 134-4
3:07-cv-0413
- 106 Sixth Status Report
Doc. 1346-18-23
3:07-cv-0413
- 107 Status Report of September 15, 2009
Doc. 144-3
3:07-cv-0413
- 108 Plaintiffs Answer to Defendants' Interrogatories
Disk 1, Tab 1,
Bates No. OVEC0001-04052
- 109 Plaintiffs Answer to Defendants' Interrogatories
Disk 1, Tab 4,
Bates No. OVEC01398-01482
- 110 CV for Raymond Lovett

- 111 January 23, 2009 CH2M HILL Technical Memorandum "Preliminary
Watershed Flow Estimation with Diversion and Equalization Analysis –
Patriot Coal, Apogee Site, Ruffner Mine Outfalls 001, 002, 003" (Doc.
136-21

Respectfully submitted,
APOGEE COAL COMPANY, LLC
By Counsel

/s/ Blair M. Gardner
BLAIR M. GARDNER (WVSB # 8807)
THOMAS J. HURNEY, JR. (WVSB # 1833)
DOUGLAS J. CROUSE (WVSB # 11094)
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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
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**OHIO VALLEY ENVIRONMENTAL
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Plaintiffs,

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Civil Action No. 3:07-cv-00413

APOGEE COAL COMPANY, LLC,

Defendant.

CERTIFICATE OF SERVICE

I, Blair M. Gardner, do hereby certify that on July 23, 2010, I electronically filed the foregoing **DEFENDANT'S WITNESS AND EXHIBIT LIST** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Derek O. Teaney
Joseph M. Lovett
Appalachian Center for the Economy
and the Environment
P.O. Box 507
Lewisburg, WV 24901

James M. Hecker
Public Justice
1825 K. Street, NW, Suite 200
Washington, DC 20006

/s/ Blair M. Gardner